

WILLIAM B. CAREY, 8212160
Attorney for Defendant
CARLOS L. RAINEY
1502 West 34th Avenue
Anchorage, Alaska 99503

Telephone: (907) 272-4255
Facsimile: (907) 272-4256

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	
)	Case No. A05-108-001 (JWS)
Plaintiff,)	
vs.)	
CARLOS L. RAINEY,)	
)	
Defendant.)	

NOTICE TO COURT OF UNAVAILABILITY OF COUNSEL AND MOTION

ON SHORTENED TIME FOR APPOINTMENT OF ADDITIONAL CJA

COUNSEL FOR LIMITED PURPOSES

COMES NOW Carlos Rainey, defendant herein, through counsel, William B. Carey, and gives Notice that Mr. Rainey has been subpoenaed to testify at the trial of his wife, and co-defendant, Shannon Rainey. Shannon Rainey's trial is set to begin Monday, August 28, 2006 in Anchorage. Mr. Rainey previously entered a change of plea and is awaiting sentencing on September 18.

It has not yet been determined whether Mr. Rainey will actually testify. Mr. Rainey has been subpoenaed by his wife, presumably to support her contention that she has suffered from Battered Woman Syndrome and/or undertook alleged criminal conduct in this matter as a result of duress and coercion by Mr. Rainey. This raises serious 5th Amendment issues in that the focus of much of the examination with

respect to Mr. Rainey may or will be prior alleged criminal conduct on the part of Mr. Rainey both charged and uncharged. Mr. Rainey is presently being held at SeaTac, but a transport order has been issued to have him moved to Anchorage at some unknown time in the next few days.

As stated in the attached Affidavit of Counsel, the undersigned has serious concerns about Mr. Rainey's testimony, including the question of whether he should testify under these circumstances. Mr. Rainey, whose decision it ultimately is, has not made up his mind on this point. He has an obvious interest in supporting his wife and the mother of his children, but he also has concerns about his exposure in this matter at sentencing and the potential consequences of his testimony.

The reason for the bringing of this Notice and Motion is that counsel for Mr. Rainey will be unavailable during the week set for trial in the Shannon Rainey matter and therefore cannot be present with Mr. Rainey to assist him in making a decision and to help him in the course of his testimony next week, if necessary. As stated in the attached Affidavit of Counsel, the undersigned will be in Southeast Alaska from Sunday, August 28 until at least Thursday evening, August 31, attending to numerous scheduled State court matters in Petersburg and Juneau. It is not at all practicable to change the dates and times of these hearings.

It is the firm opinion of the undersigned that Mr. Rainey needs to have counsel available to him in the immediate period leading up to and including his testimony at his wife's trial. On the one hand, if there were some assurance that Mr. Rainey would be allowed and given access to make telephone calls to his present attorney on counsel's cell phone while counsel was in Southeast, the situation might

be remedied. On the other hand, it might be better to have the Federal Defender appoint additional counsel for this limited purpose, that is to be available to Mr. Rainey prior to and during his appearance in the Shannon Rainey trial. The undersigned would, of course, be glad to brief other appointed counsel on the pertinent issues so that he might adequately advise and represent Mr. Rainey over the course of these events.

The undersigned has previously advised counsel for the Government and Ms. Rainey about this situation and has consulted with Federal Defender Rich Curtner.

This motion is supported by the attached Affidavit of William B. Carey.

DATED in Anchorage, Alaska this _____ day of August, 2006.

WILLIAM B. CAREY
Attorney for the Defendant
CARLOS L. RAINEY

William B. Carey
Alaska Bar No. 8212160

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 2006, a copy of the forgoing Notice and Motion was electronically served on the following:

Stephan Collins
Federal Public Defender
D. Scott Dattan